

TAB A
TO EXHIBIT 15

ENNIS M. FANT - JULY 19, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR DISTRICT OF DELAWARE

3
4 CRYOVAC, INC.,)
5 Plaintiff,)
6 v.) CASE NO.
7 PECHINEY PLASTIC) 04-1278-KAJ
8 PACKAGING, INC.,)
9 Defendant.)

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12 VIDEOTAPED DEPOSITION OF ENNIS M. FANT
13 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
14 Tuesday, July 19, 2005

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21 Reported by: Lori G. Mackenzie, RPR
22 Job No: 168430

ENNIS M. FANT - JULY 19, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 82</p> <p>1 Q. So, Simpsonville is more of a 2 production plant? 3 A. Correct. 4 Q. When would you decide to run a film 5 at Simpsonville? 6 A. When you think you've got one that 7 will work, that you've honed in at the pilot 8 plant in Duncan. 9 And, then you would go to 10 Simpsonville to see if you can mass produce it. 11 Q. Do you know what kind of equipment 12 was at Simpsonville while you were there? 13 Were there more coextrusion 14 equipment, or making seven-layer films, or 15 generally what kind of films are made? 16 A. Huge, huge. 17 MR. FUCHS: Form objection. 18 THE WITNESS: It's huge. I mean, 19 they had all kinds of stuff. More stuff than I 20 could ever remember the names or know how to even 21 find it. I just kind of went through my little 22 lines that I worked on and went home.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Do you know what the die lip is? 2 A. The lip is just the opening where 3 the coextruded product comes out of the die. 4 Q. For coextruded die, would there more 5 than one lips? 6 A. No. There would be the lip that's 7 all of the way around where the product comes out 8 already coextruded together. 9 Q. So, is it true that the die lip is 10 where the melt would first meet the ambient air? 11 A. Right. 12 Q. Now, earlier you mentioned about a 13 nine-plate seven-layer die. 14 Do you recall that? 15 A. Right. 16 Q. What is a nine-layer seven -- I'm 17 sorry, what is a nine-plate seven-layer die? 18 A. That was the coextrusion die that 19 was used to manufacture the product in question. 20 Q. What is the nine-plates? 21 A. Two top plates, the linear low 22 density polyethylene, third plate adhesive,</p>
<p style="text-align: right;">Page 83</p> <p>1 BY MR. HO: 2 Q. Referring back to, I guess, what 3 would be Fant Exhibit 2, which is the memorandum, 4 in the last paragraph the first sentence, or 5 actually -- yes, the first sentence, states: "At 6 the same time, an ETRY film was produced on the 7 Duncan cast coex line." 8 Do you know what the Duncan cast 9 coex line was? 10 A. I have no idea. I mean, the lines 11 typically had numbers. 12 Q. Do you know what an ETRY film is? 13 A. Never heard of it. 14 Q. Actually, in the same paragraph, in 15 the third line, states: "Orientation ratio was 16 defined by comparing the circumference of the die 17 stem to the circumference of the die lip." 18 Do you know what a die stem is? 19 A. No. 20 Q. Have you ever heard the term die 21 stem? 22 A. I don't recall that term.</p>	<p style="text-align: right;">Page 85</p> <p>1 fourth plate nylon, fifth plate EVOH, sixth plate 2 nylon, seventh plate adhesive, eighth and ninth 3 plates linear low density polyethylene. 4 Q. Why would there be two plates for -- 5 I'm sorry, let me go back. 6 You said there were two top plates 7 with a linear low density polyethylene, why would 8 there be required two top plates? 9 A. Because it made up 25 percent of the 10 structure, so you needed two plates to get that 11 thickness. 12 Each plate has spirals in it and it 13 would only carry so much melt. So if you're 14 trying to get a specific thickness, the more 15 plates, you would need more plates to get the 16 desired thickness. 17 Q. Between the two top plates of linear 18 low density polyethylene, would there be actually 19 two layers of linear low density polyethylene? 20 A. Two layers, but they all came 21 together to make one. 22 Q. And, so they would come together to</p>

22 (Pages 82 to 85)

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Page 86	<p>1 make one before you reach the die lips?</p> <p>2 A. Oh, yes. When you reach the die</p> <p>3 lips, all seven layers are together. The final</p> <p>4 coextruded product, when it comes out of the die,</p> <p>5 is already together.</p> <p>6 Q. Would the polymer composition</p> <p>7 between the two top plates be the same?</p> <p>8 A. Yes.</p> <p>9 Q. Would it come from the same</p> <p>10 extruder?</p> <p>11 A. Yes.</p> <p>12 Q. At what point does the polymer split</p> <p>13 between the two plates, or -- when does the</p> <p>14 polymer split?</p> <p>15 A. It doesn't. The linear levels do</p> <p>16 not split. Two dies, two plates, linear load</p> <p>17 comes in first, it starts going down, then the</p> <p>18 next plate, the resin touches.</p> <p>19 So, now you have linear low and</p> <p>20 resin, then you go down again, the nylon hits it,</p> <p>21 go a little further, the EVOH hits it, go a</p> <p>22 little further, nylon hits it, a little further,</p>	Page 88	<p>1 don't know.</p> <p>2 BY MR. HO:</p> <p>3 Q. If you were to make this product in</p> <p>4 Example 3, would you use a nine-plate seven-layer</p> <p>5 coextrusion die, or is that the proper term for</p> <p>6 it?</p> <p>7 Let me go back. What would be the</p> <p>8 die that you described earlier, the nine plates?</p> <p>9 MR. FUCHS: Form objection.</p> <p>10 THE WITNESS: There's nothing</p> <p>11 magical about the plates. You can use as many</p> <p>12 plates as you want.</p> <p>13 You can use as many plates in any</p> <p>14 configuration. They lock, you can use any</p> <p>15 configuration, you can use seven plates, you can</p> <p>16 use nine, you can use 10, you can use however</p> <p>17 many plates you want.</p> <p>18 It varies depending upon what</p> <p>19 structure you want to put together, and it's like</p> <p>20 a puzzle, you piece it together based on the</p> <p>21 outcome you're trying to accomplish.</p> <p>22 You're not locked in, we used</p>
Page 87	<p>1 adhesive hits.</p> <p>2 At the very bottom, where Plates 8</p> <p>3 and 9 are, is the outer layer of the linear load,</p> <p>4 and bingo, it comes out of the die all together.</p> <p>5 Q. When we talk about a nine-plate</p> <p>6 seven-layer film, is this -- and under Example 3</p> <p>7 of your '562 patent at Column 5, starting at line</p> <p>8 50 --</p> <p>9 A. Okay.</p> <p>10 Q. Would this product under Example 3</p> <p>11 be formed using a nine-plate seven-layer</p> <p>12 coextrusion process?</p> <p>13 A. Starting at line 50?</p> <p>14 Q. Yes.</p> <p>15 A. Column 3.</p> <p>16 Q. Column 5, I'm sorry, Column 5,</p> <p>17 Example 3.</p> <p>18 A. All right.</p> <p>19 MR. FUCHS: Objection. You're</p> <p>20 asking an opinion question. You haven't laid a</p> <p>21 foundation.</p> <p>22 THE WITNESS: I don't recall. I</p>	Page 89	<p>1 numerous different die combinations, different</p> <p>2 extruder combinations, five, six, you can use</p> <p>3 six, roll one back.</p> <p>4 There are a lot of different</p> <p>5 combinations you can use in a different numerous</p> <p>6 configurations. You're not locked into any one</p> <p>7 particular die, you're not locked into one</p> <p>8 particular extruder configuration.</p> <p>9 It just so happens, with the patent</p> <p>10 in question, it was a symmetrical product that</p> <p>11 used a nine-plate seven-layer structure that used</p> <p>12 five extruders.</p> <p>13 But, we used different ones, I mean,</p> <p>14 sometimes we use six, sometimes we used 10</p> <p>15 plates. It just varied depending on the test.</p> <p>16 Just at the end of the day, the one</p> <p>17 in the patent was the one that worked. That</p> <p>18 happened to have five extruders and seven layers</p> <p>19 and nine plates. But all of the plates</p> <p>20 interlock, you can just move them around.</p> <p>21 BY MR. HO:</p> <p>22 Q. Now, earlier you just made the</p>

23 (Pages 86 to 89)

TAB B
TO EXHIBIT 15

THE APPLICATION



Europäisches Patentamt
European Patent Office
Office européen des brevets

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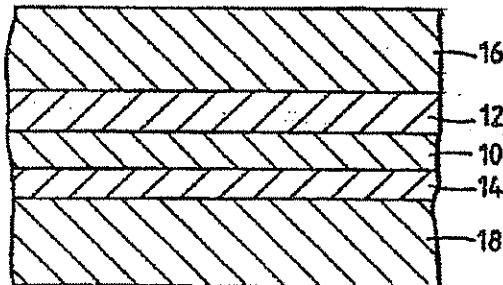
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Inventor: Shah, Gautam P., 603 Harness Trail, Simpsonville South Carolina 29681 (US)

(74) Representative: Collier, Jeremy Austin Gray et al, J.A. Kemp & Co. 14, South Square Gray's Inn, London WC1R 5EU (GB)

(56) Oxygen barrier packaging film.

A multilayer film useful in food packaging includes a core layer of ethylene vinyl alcohol copolymer, two interior adhesive layers, and two outer layers comprising polymeric materials or blends thereof such as linear low density polyethylene, or blends thereof with linear medium density polyethylene and ethylene vinyl acetate copolymer, or very low density polyethylene. Ethylene propylene copolymer, polypropylene, and blends thereof may also be used in the outer layers. Optional nylon layers may be included on each surface of the core layer. Orientation of the multilayer coextrusion provides a heat-shrinkable film.



EP 0 236 099 A2

ACTORUM AG

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TAB C
TO EXHIBIT 15

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR DISTRICT OF DELAWARE

3

4 CRYOVAC, INC.,)

5 Plaintiff,)

6 v.) CASE NO.

7 PECHINEY PLASTIC) 04-1278-KAJ

8 PACKAGING, INC.,)

9 Defendant.)

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11

12 VIDEOTAPED 30(b)(6) DEPOSITION OF CRYOVAC, INC.

13 BY AND THROUGH GAUTAM P. SHAH, CORPORATE DESIGNEE

14 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

15 Thursday, August 11, 2005

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21 Reported by: Lori G. Mackenzie, RPR

22 Job No: 169071B

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 6</p> <p>1 MR. TRYBUS: Steven Trybus from 2 Jenner & Block on behalf of Pechiney Plastic 3 Packaging, Inc. 4 MR. FUCHS: Marty Fuchs and Carlos 5 Tellez from Finnegan, Henderson, Farabow, Garrett 6 & Dunner representing the Plaintiff, Cryovac. 7 THE VIDEOGRAPHER: Thank you. Will 8 the court reporter please swear in the witness. 9 GAUTAM P. SHAH, 10 was called as a 30(b)(6) Corporate Designee of 11 CRYOVAC, INC. witness for examination, having 12 been first duly sworn, was examined and testified 13 as follows: 14 EXAMINATION BY COUNSEL FOR DEFENDANT 15 BY MR. TRYBUS: 16 Q. Good afternoon, Mr. Shah. 17 A. Good afternoon. 18 Q. You understand that we have 19 completed the personal part of your deposition a 20 few moments ago, and that now we are proceeding 21 into what we're calling a 30(b)(6) deposition? 22 A. Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 THE WITNESS: Yes. 2 BY MR. TRYBUS: 3 Q. And, do you consent to testify on 4 behalf of Cryovac? 5 A. Yes. 6 Q. First topic in Schedule A begins 7 with talking about the conception, skipping over 8 some of the other parts, of the alleged 9 inventions in each claims of the '419 patent. 10 Are you prepared to talk about the 11 conception of the alleged inventions for each 12 claim of the '419 patent? 13 A. Yes. 14 Q. What did you do to prepare for your 15 testimony here? 16 A. I read the patent, '419, to 17 understand what was involved in the patent, the 18 film of invention. 19 And, came here and worked with my 20 attorneys to understand what was involved with 21 the depositions. 22 Q. And, just so it's on the record, you</p>
<p style="text-align: right;">Page 7</p> <p>1 (Shah 30(b)(6) Exhibit Number 1 2 marked for identification.) 3 BY MR. TRYBUS: 4 Q. Let me show you what we've marked as 5 Exhibit 1 for your 30(b)(6) deposition. 6 MR. FUCHS: How did you mark this, 7 Shah 30(b)(6) 1? 8 MR. TRYBUS: Shah 30(b)(6)1. 9 BY MR. TRYBUS: 10 Q. Mr. Shah, have you seen that 11 document before? 12 Have you seen this before? 13 A. Yes. I was shown this by my 14 attorney in preparation for the deposition. 15 Q. And, do you understand that you're 16 going to be giving testimony, not just from your 17 personal knowledge, but on behalf of Cryovac and 18 what was reasonably known to Cryovac on the 19 topics set forth in Schedule A of Exhibit 1? 20 THE WITNESS: Can you repeat the 21 question? It was too long. 22 (Record read.)</p>	<p style="text-align: right;">Page 9</p> <p>1 didn't have to talk to the inventor of the '419 2 patent about this, because you are the inventor 3 of the '419 patent, correct? 4 A. Yes. I'm the inventor of patent 5 '419. 6 Q. When was the subject matter of 7 Claim 11 of the '419 patent conceived? 8 And, Mr. Shah, just so you have it, 9 I will give you a copy of the '419 patent which 10 was marked as Exhibit 2 during your personal 11 deposition. 12 I'm not going to remark it here. 13 MR. FUCHS: Good. 14 THE WITNESS: Can you repeat the 15 question? 16 BY MR. TRYBUS: 17 Q. When was the subject matter of 18 Claim 11 conceived? 19 A. The subject matter of the Claim 11 20 was conceived on or before the manufacture of the 21 film of invention on April 2nd of 1985. 22 Q. Okay. And, so that the record is</p>

3 (Pages 6 to 9)

GAUTAM P. SHAH, AUGUST 11, 2005
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<p style="text-align: right;">Page 18</p> <p>1 practice?</p> <p>2 A. Both films, FDX-1570 and 1572 were</p> <p>3 reduced to practice by August 30th, 1985.</p> <p>4 Q. What happened on August 30th, 1985?</p> <p>5 A. This is when all of the tests were</p> <p>6 completed on these films, and these results were</p> <p>7 communicated back to me.</p> <p>8 And, by looking at the results, I</p> <p>9 became aware that the films properties met the</p> <p>10 objective of the project.</p> <p>11 Q. Is Cryovac aware of any documentary</p> <p>12 evidence relating to FDX-1572, other than what's</p> <p>13 set forth in Exhibit 3?</p> <p>14 MR. FUCHS: Form objection.</p> <p>15 THE WITNESS: Can you repeat the</p> <p>16 question?</p> <p>17 (Record read.)</p> <p>18 THE WITNESS: Can you repeat that</p> <p>19 again?</p> <p>20 (Record read.)</p> <p>21 THE WITNESS: Yes. There is</p> <p>22 Exhibit 5, which shows the production or</p>	<p style="text-align: right;">Page 20</p> <p>1 evidence, has been marked as Shah 30(b)(6)</p> <p>2 Exhibit 4, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Is there anything within the</p> <p>5 four corners of Exhibit 4 that indicates that the</p> <p>6 film described there was conceived by you,</p> <p>7 Mr. Shah, as opposed to, for example, Mr. Kay?</p> <p>8 MR. FUCHS: Form objection.</p> <p>9 THE WITNESS: Yes, there is nothing</p> <p>10 in this document that indicates that this</p> <p>11 invention was conceived by me and not Tommy Kay</p> <p>12 or somebody else.</p> <p>13 BY MR. TRYBUS:</p> <p>14 Q. Does Cryovac have any evidence at</p> <p>15 all, whether documentary or otherwise, that the</p> <p>16 film 1572 was conceived by you, as opposed to by</p> <p>17 Mr. Kay?</p> <p>18 MR. FUCHS: I'm going to go</p> <p>19 objection, beyond the scope of the schedule.</p> <p>20 MR. TRYBUS: Your objection is</p> <p>21 noted.</p> <p>22 MR. FUCHS: And objection to form.</p>
<p style="text-align: right;">Page 19</p> <p>1 manufacture of FDX-1572.</p> <p>2 MR. TRYBUS: And, just so we don't</p> <p>3 get confused, is that Exhibit 4, or did I mark it</p> <p>4 four?</p> <p>5 THE WITNESS: It's marked 5 here.</p> <p>6 MR. TRYBUS: What did I mark as</p> <p>7 four?</p> <p>8 MR. FUCHS: Okay. Can we just, one</p> <p>9 is the notice, two is Page 64, 65 and 63, three</p> <p>10 is --</p> <p>11 MR. TRYBUS: The TSR --</p> <p>12 MR. FUCHS: Is the August 30th</p> <p>13 receipt thing.</p> <p>14 MR. TRYBUS: Right.</p> <p>15 MR. FUCHS: That's three, and, then</p> <p>16 four is the 1572 one?</p> <p>17 MR. TRYBUS: Yes.</p> <p>18 (Shah 30(b)(6) Exhibit Number 4</p> <p>19 marked for identification.)</p> <p>20 BY MR. TRYBUS:</p> <p>21 Q. So, the information on FDX-1572, of</p> <p>22 which Cryovac is aware of the documentary</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. TRYBUS: Your objection is</p> <p>2 noted. I think it's well within the schedule.</p> <p>3 It talks about who performed, or witnessed the</p> <p>4 act or activities, including conception and I</p> <p>5 think that's what I'm asking about.</p> <p>6 But, let's read the question back</p> <p>7 and see if Mr. Shah can answer it.</p> <p>8 THE WITNESS: Can you repeat the</p> <p>9 question again?</p> <p>10 (Record read.)</p> <p>11 THE WITNESS: I have not been --</p> <p>12 MR. FUCHS: Also form objection as</p> <p>13 to by evidence are you including the deposition</p> <p>14 testimony that just occurred earlier today.</p> <p>15 MR. TRYBUS: I'm including</p> <p>16 everything.</p> <p>17 THE WITNESS: I wasn't provided any</p> <p>18 documentation or evidence. I don't know of any</p> <p>19 evidence that shows that FDX-1572 was, invention</p> <p>20 was conceived by me.</p> <p>21 BY MR. TRYBUS:</p> <p>22 Q. Does Cryovac have any evidence at</p>

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GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 22</p> <p>1 all, whether documentary or otherwise, that the 2 film 1570 was conceived by you, as opposed to by 3 Mr. Kay? 4 A. We have the patent invention 5 disclosure, which if it could be considered as 6 the evidence of invention by me, I could present 7 that into evidence and there are two invention 8 disclosures that were sent out on May 2nd, 1985, 9 disclosing of my invention of FDX-1570 and 1572. 10 MR. TRYBUS: Let's mark as 11 Exhibit 5, the document to which you were just 12 referring, Mr. Shah. 13 (Shah 30(b)(6) Exhibit Number 5 14 marked for identification.) 15 BY MR. TRYBUS: 16 Q. Is what I've marked as Exhibit 5 a 17 copy of what you were referring to? 18 A. Yes. Exhibit 5 refers to the 19 invention disclosures that were sent to Mr. Mark 20 Quatt for his advisement to Mr. Engelmann, 21 regarding the inventions by me of FDX-1570 and 22 FDX-1572.</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. FUCHS: Form objection. 2 THE WITNESS: Can you repeat the 3 question? 4 (Record read.) 5 THE WITNESS: Double negative. Is 6 there any question not withheld? 7 BY MR. TRYBUS: 8 Q. Let me try it this way. What do you 9 understand 20 and 21, in this list marked as 10 Exhibit 5, to be? 11 A. I believe these are the invention 12 disclosures that I had sent to my attorney to 13 determine if the patent applications could be 14 filed on my inventions. 15 Q. Please tell me everything you 16 understand is in Document 20. 17 MR. FUCHS: Hold on. I have to 18 instruct you not to answer the question, because 19 as the withheld document log shows it was a 20 attorney/client communication to which you are 21 not entitled. 22 MR. TRYBUS: Marty, I will just say,</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Where, on Exhibit 5, is an invention 2 disclosure related to FDX-1570 set forth? 3 A. This information, which is 4 confidential and I could not share with you, but, 5 that would be contained in the Item 20 and 21. 6 MR. FUCHS: Okay. There was a 7 highlighted document that the company gave him 8 and he was not looking at the highlighted 9 document. 10 Perhaps you can repeat the question 11 with the highlighted document in front of you. 12 THE WITNESS: Yes, okay. 13 (Record read.) 14 THE WITNESS: The invention 15 disclosures, the Items 20 and 21 on Exhibit 5, 16 are the invention disclosures for FDX-1570 and 17 1572 that I sent to Mark Quatt. 18 BY MR. TRYBUS: 19 Q. Is there any document that is not 20 being withheld by Cryovac, based on a claim of 21 privilege, that shows any conception by you of 22 the Film 1570 or 1572?</p>	<p style="text-align: right;">Page 25</p> <p>1 for the record, you guys can assert privilege on 2 it. I have read and reread the Spalding Sports 3 Worldwide case that deals with this. 4 You're certainly entitled to assert 5 privilege on it. You're not entitled to assert 6 privilege on it, however, and then try to use it 7 as evidence to show a conception. 8 So, at this point, I would 9 officially state that if you are going to try to 10 rely on it, this is the time to disclose it 11 because we're here in the 30(b)(6) deposition for 12 which it would be used. 13 And, if it's not disclosed now, 14 we're going to move to strike it to the extent 15 you try to bring it in later, the document 16 itself, or any facts about it. 17 MR. FUCHS: Just to respond, at no 18 time prior to this moment, which is less than a 19 week away from the close of discovery, has your 20 client, Pechiney, in any interrogatory answer, 21 ever suggested that they were going to assert any 22 inventorship defense.</p>

7 (Pages 22 to 25)

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 30</p> <p>1 (Record read.)</p> <p>2 THE WITNESS: I don't know of any</p> <p>3 other documents that describe the manufacture of</p> <p>4 this film.</p> <p>5 BY MR. TRYBUS:</p> <p>6 Q. Aside from what's here, are there</p> <p>7 any other documents that describe any analysis of</p> <p>8 the FDX-1570 film?</p> <p>9 A. I don't know of any other documents</p> <p>10 that would describe the analysis of the FDX-1572</p> <p>11 or 1570 beyond what's in the document here.</p> <p>12 Q. And, just to complete the loop,</p> <p>13 Mr. Shah, aside from what has been marked here</p> <p>14 during this deposition, are there any other</p> <p>15 documents that refer or describe the manufacture</p> <p>16 of the FDX-1572 film?</p> <p>17 THE WITNESS: Can you repeat the</p> <p>18 question?</p> <p>19 (Record read.)</p> <p>20 THE WITNESS: No, there are no other</p> <p>21 documents that I know of that would describe the</p> <p>22 manufacture of FDX-1572 beyond what is shown</p>	<p style="text-align: right;">Page 32</p> <p>1 were made.</p> <p>2 Can you read back the answer for me,</p> <p>3 please?</p> <p>4 (Record read.)</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. TRYBUS:</p> <p>7 Q. Mr. Shah, moving on to Category 2 in</p> <p>8 Schedule A, can you tell me what activities led</p> <p>9 up to the conception of the subject matter of</p> <p>10 Claim 11 of the '419 patent?</p> <p>11 THE WITNESS: Can you repeat that</p> <p>12 question again, please?</p> <p>13 (Record read.)</p> <p>14 THE WITNESS: Again, the films of</p> <p>15 Claim 11 were conceived on or before April 2nd</p> <p>16 and April 3rd of 1985.</p> <p>17 BY MR. TRYBUS:</p> <p>18 Q. What activities led up to that</p> <p>19 alleged conception?</p> <p>20 A. The manufacturing of FDX-70 and</p> <p>21 FDX-72 films.</p> <p>22 Q. Anything else?</p>
<p style="text-align: right;">Page 31</p> <p>1 here.</p> <p>2 BY MR. TRYBUS:</p> <p>3 Q. When does Cryovac contend that the</p> <p>4 subject matter of Claim 1 of the '419 patent was</p> <p>5 conceived?</p> <p>6 MR. FUCHS: Objection. Relevance.</p> <p>7 Lack of relevance.</p> <p>8 THE WITNESS: What is the question?</p> <p>9 (Record read.)</p> <p>10 MR. FUCHS: Also objection. Lack of</p> <p>11 foundation. You haven't laid a foundation that</p> <p>12 Cryovac does contend anything with respect to</p> <p>13 Claim 1 of the '419 patent in this litigation.</p> <p>14 BY MR. TRYBUS:</p> <p>15 Q. Can you answer the question,</p> <p>16 Mr. Shah?</p> <p>17 THE WITNESS: Again, if you would</p> <p>18 repeat the question?</p> <p>19 (Record read.)</p> <p>20 THE WITNESS: Again, the subject</p> <p>21 matter of Claim 1 were conceived on or before</p> <p>22 April 2nd and April 3rd, when both of the films</p>	<p style="text-align: right;">Page 33</p> <p>1 A. There is nothing else that I can</p> <p>2 recall.</p> <p>3 MR. TRYBUS: Why don't we take a</p> <p>4 short break.</p> <p>5 MR. FUCHS: Okay.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 17:11:35, off the record.</p> <p>8 (Recess -- 5:11-5:16 p.m.)</p> <p>9 THE VIDEOGRAPHER: On the record,</p> <p>10 the time is 17:16:15.</p> <p>11 MR. TRYBUS: Counsel, I will just</p> <p>12 reiterate our belief that if Cryovac is intending</p> <p>13 to rely on either of the invention disclosure</p> <p>14 statements, they need to be produced and they</p> <p>15 need to be produced now for the purposes of this</p> <p>16 deposition.</p> <p>17 I understand that that's not going</p> <p>18 to happen right now. So, unless you're prepared</p> <p>19 to do that, I don't have any further questions at</p> <p>20 this time.</p> <p>21 MR. FUCHS: Okay. And, I think I</p> <p>22 satisfactorily explained why I disagreed. But,</p>

9 (Pages 30 to 33)

TAB D
TO EXHIBIT 15

Cryovac's Withheld Document Log for Civil Action # 04-1278(KAJ)
Confidential - Subject to Protective Order

PRIV #	DATE	AUTHOR(S)	RECIPIENT(S)	COPYEE(S)	DESCRIPTION	BASIS
19	04/24/1985	Shah, G.**	Quatt, M.*	None	Confidential communication between client and attorney providing information to attorney so that attorney could provide legal advice with respect to obtaining patent protection for client's invention.	AC
20	05/02/1985	Shah, G.**	Quatt, M.*	Engelmann, A.**	Confidential communication between client and attorney where client provided information to attorney so that attorney could provide legal advice and legal assistance in connection with evaluating patentability of and preparing a patent application for client's invention.	AC
21	05/02/1985	Shah, G.**	Quatt, M.*	Engelmann, A.**	Confidential communication between client and attorney where client provided information to attorney so that attorney could provide legal advice and legal assistance in connection with evaluating patentability of and preparing a patent application for client's invention.	AC
22	05/06/1985	Mixon, G.*	Shah, G.**	None	Confidential communication between attorney's subordinate (Mixon, G.*) and client wherein subordinate relayed legal advice from attorney (Quatt, M.*) with respect to disclosures of client's invention.	AC
23	06/28/1985	Shelton, T.*	Quatt, M.*	None	Confidential communication between attorney's assistant (Shelton, T.*) and attorney (Quatt, M.*) wherein assistant provided information, including information from co-counsel (Toney, J.*), so that attorney could provide legal advice and legal assistance with respect to the preparation of client's patent application.	AC
24	07/03/1985	Quatt, M.*	Shah, G.**	None	Confidential communication between attorney and client wherein attorney requested information and provided legal advice with respect to client's patent application.	AC
25	08/05/1985	Fant, E.**	Quatt, M.*	None	Confidential communication between client and attorney providing information so that attorney could provide legal advice and evaluate patentability of client's invention.	AC
26	08/08/1985	Rogers, K.**	Quatt, M.* Childress, B.** Koteles, R.** Esakov, M.** Walters, J.** Bornstein, N.** Cannon, K.**	None	Confidential communication between client and attorney providing information to attorney so that attorney could provide legal advice and legal assistance in assessing patentability of client's invention.	AC

EXHIBIT 5
 Shah 30(d)(6)
 8/11/05 CEM

* denotes outside or in-house counsel or agent or assistant thereof - see Identification of Individuals Listed on Cryovac's Withheld Document Log for more details about listed individuals.
 ** denotes employees and consultants (other than counsel or agents or assistants thereof) - see Identification of Individuals Listed on Cryovac's Withheld Document Log for more details about listed individuals.
 *** Cryovac refers to Cryovac, Inc. and its predecessor and successor entities.

July 25, 2005

-3-

MIL
D

TABS E - N
TO EXHIBIT 15

REDACTED IN FULL

TAB O
TO EXHIBIT 15

29

Fox 1570

D = BARKER

Formulation:

2 Plate Air

Outside - Skin	=	Fox 1533	27.9%
(*)	=	Plexar 2581	9.5%
		Nylon CA 6	12.4%
Core - EVAL		1158 Long	9.4%
		Nylon CA 6	9.5%
(*)		Plexar 2581	5.0%
Inside - Skin		Fox 1533	26.5%

MPD Lin - Auran

29.8 FPM x 13 1/2 mil thick x 11.75" x
41" x 98 lights

MD = 3.29
TD 3.49

NBPV 135208B

J. S. Key
4-2-85

Plaintiff's Trial
Exhibit

94

Fox 1533

Tumble Blend.

	100 LBS	-	1182	RIDL
	50 LBS	-	1283	LAND
TR	34 LBS	-	1069	BECH
TR	16 LBS	-	F380	MA

200

SKin layer for O² Barrier.

J. S. Kay
1-30-85

CONFIDENTIAL

PROBLEM NO.

SUBJECT:

DATE

CRYOVAC

EVT

D

Zone

1

2

3

4

5

Gels

Adpt

Dev

1

2

3

Comp

M. Press

melt

R.P.M's

Pat. Lett's

T. Temp

T. Width

T. Thickness

MA

P. Kent

Steam

V.D

E.C

J. Temp

D. Scale

P. Gage

M.D

T.D

Fbr 638

1

SKL

390

410

410

410

410

410

410

410

410

410

410

80

5600

N/W

35.0

430

29.8

11.75

13.5

10

OFF

228

V.D

E.C

J. Temp

D. Scale

P. Gage

M.D

T.D

FOX 4570

LONG

2

Cone

390

390

390

410

410

410

410

410

410

410

410

25

4300

450

10.6

430

29.8

11.75

13.5

10

OFF

228

V.D

E.C

J. Temp

D. Scale

P. Gage

M.D

T.D

Nylon

3

410

410

410

410

410

410

410

410

410

410

410

410

30

12/4

12/4

33

430

29.8

11.75

13.5

10

OFF

228

V.D

E.C

J. Temp

D. Scale

P. Gage

M.D

T.D

Plexia

4

Adhesion

390

410

410

410

410

410

410

410

410

410

410

60

3500

400

60

430

29.8

11.75

13.5

10

OFF

228

V.D

E.C

J. Temp

D. Scale

P. Gage

M.D

T.D

CONFIDENTIAL

SIGNED

DATE

UNDERSTOOD AND
WITNESSED

DATE

No 139208 B

TAB P
TO EXHIBIT 15

31

Fox 1572

Structure: 0² Barrier -

EXT.	1	4	3	2	3	4	1
(1)	Fox 1525	MODIC P310H	Nylon CA 6	EXAL K	Nylon CA 6	MODIC P310H	Fox 1525
(2)	30.4%	11%	7%	11%	3%	11%	28%
(3)	4.1	1.5	.96	1.45	.36	1.36	3.79 (mils)

Processed on MPD Line:

29.6 Fm X 13.5 mils X 11.75" X 98 Defflate
X 41" X 100 GA nominal

MD = 3.3

TD 3.5

7 Plate Die

J-S Kay
4-3-05
NBPN 1392108

Plaintiff's Trial
Exhibit

95

PROBLEM NO.

137-743

DATE

4-3

19

85

SUBJECT:

D2 Banner

FDX 115 12

CRYOVAC

7 Plate Di - 7 Layers -

FDX 1525 / MODIC / Nylon / EVAL / Nylon / MODIC / FDX 1525
 P310H / CAG / K / CAG / P310H
 outside Subst. Adh. Core Adh. Subst. inside

	(SKINS)	1	(EVAK)	2	Nylon	3	MODIC	4
1		340		390		350		330
2		350		390		360		335
2		380		390		360		340
4		350		400		-		-
5		350		-		-		-
6		350		415		370		340
Ad.		350		415		370		350
Del 1		380		-		-		-
2		390		-		-		-
3		390		-		-		-
Amper		65		25		20		50
W Press		3500		3800		N/W		3000
Melt		N/W		438		N/W		350
RPMs		43.2		10.6		24		50
Pat.		530		37		210		460
T Sp		29.6						
T Weld		11.75						
T Thicker		13.5						
MA	0							
Pre Heat		OFF						
Steam		2						
V.D								
C.D		OFF						
Film Width		42						
Film Gauge		100						
MD								
TD								

CONFIDENTIAL

SIGNED

1
 Jm S
 4-3-85

UNDERSTOOD AND
WITNESSED:

Gautam P. Shah

DATE

DATE

4-3-85

N2 139209 B

TAB Q
TO EXHIBIT 15

ENNIS M. FANT - JULY 19, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 IN THE UNITED STATES DISTRICT COURT
2 FOR DISTRICT OF DELAWARE
3
4 CRYOVAC, INC.,)
5 Plaintiff,)
6 v.) CASE NO.
7 PECHINEY PLASTIC) 04-1278-KAJ
8 PACKAGING, INC.,)
9 Defendant.)

10 - - - - -

11
12 VIDEOTAPED DEPOSITION OF ENNIS M. FANT
13 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
14 Tuesday, July 19, 2005
15
16
17
18
19
20

21 Reported by: Lori G. Mackenzie, RPR
22 Job No: 168430

COPY

ENNIS M. FANT - JULY 19, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 cover only unoriented films?

2 MR. FUCHS: Same objection.

3 BY MR. HO:

4 Q. This is your opinion from reading
5 Claim 1?

6 MR. FUCHS: Yes. That's my
7 objection. You have not laid a foundation to
8 elicit opinion testimony from the witness.

9 MR. HO: I'm asking his opinion.
10 I'm not asking him as a patent attorney.

11 MR. FUCHS: No. I'm saying you
12 haven't laid a foundation to elicit any opinions
13 from him, because you haven't laid the foundation
14 to get opinion testimony.

15 THE WITNESS: And, I couldn't answer
16 it, because I have no knowledge about shrink
17 films and shrink orientation or any of that.

18 That was just foreign to me. It was
19 something other people did.

20 BY MR. HO:

21 Q. Was it your intention, when you came
22 up with the film that resulted in the '562

ENNIS M. FANT - JULY 19, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 patent, that it be limited to unoriented films?

2 A. All I did in laminates was
3 unoriented films. We -- I know nothing about
4 film orientation, at all.

5 So, obviously I would not think that
6 it would be oriented at any point, because we
7 don't do that in laminates.

8 So, there would never be a thought
9 to consider that.

10 Q. Okay. Now, referring to the '562
11 patent again, turn to Column 3, which is the
12 fourth page of your patent.

13 The last paragraph of Column 3,
14 right under Description of the Preferred
15 Embodiment --

16 A. Right.

17 Q. -- there's a sentence that says:
18 "The film structure depicted in Figure 1 is
19 directed to a multilayer film which is preferably
20 palindromic or symmetrical in construction."

21 Do you know what is meant by
22 palindromic?

ENNIS M. FANT - JULY 19, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 evening.

2 Q. What did you do yesterday?

3 A. Took it easy. Called some old
4 friends. Walked on K Street.

5 Q. Is Mr. Fuchs representing you as an
6 attorney for this deposition?

7 A. Yes.

8 MR. HO: I have no further
9 questions.

10 EXAMINATION BY COUNSEL FOR PLAINTIFF

11 BY MR. FUCHS:

12 Q. Reverend Fant, I have a couple of
13 questions on cross-examination.

14 Could you place before you Fant
15 Exhibit Number 3, that was your United States
16 Patent Number 4,746,562.

17 Do you have that in front of you?

18 A. Yes, sir.

19 Q. Was the film described in your
20 patent oriented or not oriented?

21 A. Not oriented.

22 Q. Would you have known how to orient

ENNIS M. FANT - JULY 19, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 this film described in your patent in 1986?

2 MR. HO: Objection.

3 THE WITNESS: No idea.

4 MR. HO: Speculation.

5 THE WITNESS: Laminates did not
6 orient films at all, and I worked in laminates
7 the entire time I was there. I have no
8 experience in orienting film.

9 BY MR. FUCHS:

10 Q. Just so my question is clear,
11 because there was a form objection, based on your
12 personal knowledge, would you have known how to
13 orient the film described in your patent in 1986?

14 A. No.

15 Q. Were you a person of ordinary skill
16 in the art to which your patent pertains in 1986?

17 MR. HO: Objection.

18 THE WITNESS: Yes.

19 MR. FUCHS: I have no further
20 questions.

21 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

22 BY MR. HO:

TAB R
TO EXHIBIT 15

Tommy Kay August 16, 2005

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYOVAC, INC.,

Plaintiff/Counter-Defendant,

Civil Action No. 04-1278

vs.

Hon. Kent A. Jordan

PECHINEY PLASTIC PACKAGING, INC.,

Defendant/Counter-Plaintiff.

VIDEOTAPED

COPY

DEPOSITION OF: Tommy Kay

DATE: August 16, 2005

TIME: 9:18 a.m.

LOCATION: Nelson, Mullins, Riley & Scarborough

104 South Main Street

Greenville, SC 29601

TAKEN BY: Counsel for Defendant

REPORTED BY: KENNETH McCLURE,

Registered Merit Reporter

VIDEOTAPE

Computer-Aided Transcription By:

A. WILLIAM ROBERTS, JR. & ASSOCIATES

Charleston, SC

(843) 722-8414

Greenville, SC

(864) 234-7030

Columbia, SC

(803) 731-5224

CONFIDENTIAL

Charlotte, NC

(704) 573-3919

Tommy Kay August 16, 2005

Page 2

1 APPEARANCES OF COUNSEL

2 ATTORNEYS FOR PLAINTIFF CRYOVAC:

3 FINNEGAN HENDERSON, FARABOW,
4 GARRETT & DUNNER, LLP
5 BY: REBECCA D. HESS, ESQ.
6 901 New York Avenue, N.W.
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9 rebecca.hess@finnegan.com

10 ATTORNEYS FOR DEFENDANT PECHINEY:

11 JENNER & BLOCK, LLP
12 BY: LI-CHUNG DANIEL HO, ESQ.
13 One IBM Plaza
14 Chicago, IL 60611-7603
15 (312) 222-9350
16 dho@jenner.com

17

18 ALSO PRESENT:

19

20 JACK MARKS, VIDEOGRAPHER

21

22

23

24

25

Tommy Kay August 16, 2005

Page 126

1 MS. HESS: May I please have the question
2 read?

3 (The pending question was read.)

4 MS. HESS: I'm going to object to the form
5 of the question, counselor.

6 Q. If you know.

7 MS. HESS: Lack of foundation.

8 A. I don't know.

9 Q. Now, Mr. Kay, when was the first time you
10 became aware of the film structure that's identified
11 as FDX 1570 that's in your Notebook No. 139208B?

12 A. April the 2nd.

13 When did I become aware of it?

14 Q. Correct. Of this particular film
15 structure. If you recall.

16 A. I don't recall when I became aware -- the
17 engineer, probably the day before or day -- during
18 that week, said: We need to schedule that run.
19 This is the day that I made it on. A day or two
20 prior to this, we discussed what we were going to
21 do.

22 Q. Do you know who is the engineer that told
23 you about the film structure that's FDX 1570?

24 A. Gautam Shah.

25 Q. Do you remember what he told you about this

Tommy Kay August 16, 2005

Page 195

1 Q. -- and before you read this abstract
2 section that you just did for the 562 patent, do you
3 recall knowing about the film structure that
4 Mr. Fant described here?

5 A. No.

6 MS. HESS: Objection. Lack of foundation.
7 You didn't lay the foundation that he even
8 understands what he just read for the first time.

9 MR. HO: I have no further questions.

10 MS. HESS: Can we take a short break?

11 MR. HO: Sure.

12 THE VIDEOGRAPHER: Going off the record at
13 17:00 hours.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: Back on the video record
16 at 17:19.

17 EXAMINATION

18 BY MS. HESS:

19 Q. Mr. Kay, I'm just going to ask you a few
20 questions.

21 How did you know what materials to use in
22 the layers of FDX 1570 and 1572?

23 A. Through the engineer, Gautam Shah,
24 instructing me.

25 Q. And how did you know what layer ratios or

Tommy Kay August 16, 2005

Page 196

1 thicknesses to use for the films FDX 1570 and 1572?

2 A. Through the engineer, Gautam Shah.

3 Q. He told you --

4 A. To -- to set it up like what we set it up
5 here, or that way. He gave me the numbers.

6 Q. And how did you know what order to put the
7 layers in in the films FDX 1570 and FDX 1572?

8 A. Per Gautam Shah's instructions.

9 Q. And how did you know to orient the films
10 FDX 1570 and 1572?

11 A. On the MPD line there that we have been
12 discussing, we knew to come there. We was going to
13 rack it and make film from it, and that's the only
14 place we could do it.

15 Q. Who told you, if anyone, to use the MPD
16 line to make the films?

17 A. Gautam, Gautam Shah, Mr. Shah.

18 Q. And how did you know to make a film with
19 seven layers as opposed to five layers?

20 A. Through Gautam Shah.

21 Q. Did Mr. Shah tell you to coextrude the
22 film?

23 A. Yes. He told us to build the MPD line. We
24 knew that was a coextrusion line, and it would
25 automatically be extruded.

TAB S
TO EXHIBIT 15

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF DELAWARE

CRYOVAC, INC.,)
Plaintiff,)
v.) CASE NO.
PECHINEY PLASTIC) 04-1278-KAJ
PACKAGING, INC.,)
Defendant.)

VIDEOTAPED 30(b)(6) DEPOSITION OF CRYOVAC, INC.
BY AND THROUGH GAUTAM P. SHAH, CORPORATE DESIGNEE
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Thursday, August 11, 2005

Reported by: Lori G. Mackenzie, RPR

Job No: 169071B

COPY

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312.782.8087 800.708.8087 FAX: 312.704.4950

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 also the oxygen transmission rate of the films.

2 Q. This document, Exhibit 3, refers to,
3 on Page 3 of the exhibit, with production number
4 CR 9-49, in terms of sample identification,
5 refers to an FDX-1570.

6 Do you see that?

7 A. Yes.

8 Q. Is that the same film that's
9 referred to in Example 2?

10 A. Exhibit 2.

11 Q. Exhibit 2?

12 A. Yes, it's the same film referred to
13 in Exhibit 2, yes.

14 Q. It also refers to an FDX-1572 film,
15 do you see that?

16 A. Yes.

17 Q. Does Cryovac contend that the 1572
18 film is also an actual reduction to practice of
19 the subject matter of Claim 11 of the '419
20 patent?

21 A. Yes.

22 Q. When was the 1572 film reduced to

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 practice?

2 A. Both films, FDX-1570 and 1572 were
3 reduced to practice by August 30th, 1985.

4 Q. What happened on August 30th, 1985?

5 A. This is when all of the tests were
6 completed on these films, and these results were
7 communicated back to me.

8 And, by looking at the results, I
9 became aware that the films properties met the
10 objective of the project.

11 Q. Is Cryovac aware of any documentary
12 evidence relating to FDX-1572, other than what's
13 set forth in Exhibit 3?

14 MR. FUCHS: Form objection.

15 THE WITNESS: Can you repeat the
16 question?

17 (Record read.)

18 THE WITNESS: Can you repeat that
19 again?

20 (Record read.)

21 THE WITNESS: Yes. There is
22 Exhibit 5, which shows the production or

TAB T
TO EXHIBIT 15

Services
rice Reque

1253
1257

No. 1-6777

DATE Apr 30, 1985

Date 4-24-85

TO: A. P. Akah

Order Appr. AD Dept. No. 137

Appr. FDS/1.14 Proj. No. 3743

LAYER OXYGEN BARRIER SHRINK FILMS

Would you please review this report
and return with your typewritten comments
as soon as possible.

Man Hours:

Margaret Fowler

ground:

rier shrink films with nylon
tion for the film.

RESTRICTED

Plaintiff's Trial
Exhibit

97

Analytical Services
Technical Service Request

CRYOVAC

W. R. Grace & Co.
Cryovac DivisionNo. 1-6777Date 4-24-85Proj. Controller Appr. AD Dept. No. 137Originator GAUTAM P. SHAH Dept. Mgr. Appr. FDS N.H. Proj. No. 3743Subject DETERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

Man Hours:

Justification For Request and Sample Background:

The properties of seven layer oxygen barrier shrink films with nylon and EVOH will help determine the application for the film.

Priority
A.D.B.

RESTRICTED

Originator GAUTAM P. SHAH

No.

1-6777Subject: DETERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS.

Sample Identification:

FDX 1570: LLDPE-EVA/ADHESIVE/NYLON/EVAL/NYLON/ADHESIVE/LLDPE
CA6 F CA6 -EVA

FDX 1572: EPC/ADHESIVE/NYLON/EVAL/NYLON/ADHESIVE/EPC
CA6 K CA6

For A.S. Use Only.

Scheduled 4/29/05 10:30Route To R-6

For Comments _____

Approved _____

Sample Received with TSR
Yes _____ No _____Sample Disposition

Destroy

Return to Me

Services Requested:

☒ Tensile & Elongation _____☒ Haze☒ Modulus at __________
Total Transmission☒ Tear Propagation _____☒ Gloss☒ Free Shrink at 200°, 220°, 240°, 260°, 280°, 300° F☒ Density at 23°C☒ Shrink Tension at 200°, 220°, 240°, 260°, 280°, 300° F☒ Moisture Vapor Transmission☒ Ball Burst at _____☒ Oxygen Transmission

Other Tests and/or Special Instructions:

Oxygen transmission at 0% to 100% RH @ room temperature

Clarity

COF IN/IN and OUT/OUT

Layer Gauge (all layers)

Interply bond strength (between all layers)

MICROSCOPY LABORATORY REPORT

TSR 1-6777

Written by: Kenneth Cannon ^{KdL}

Approved by: Blaine Childress ^{Bee}

SEVEN LAYER OXYGEN BARRIER

SHRINK FILMS

Two samples of barrier shrink film was submitted to this laboratory for optical thickness gauging. The samples were first cross-sectioned, then gauged using the Unitron Metallograph @ 400X. The results are recorded on the data sheet included with this report.

Research Notebook Page 535D

Man Hours: 6

KC/mlf 8/28/85

- 1 -

TSR 1-6777

DETERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

TENSILE AND ELONGATION AT BREAK AND 73 DEG.F.

SAMPLE	LONGITUDINAL			TRANSVERSE		
	TENSILE PSI	ELONG. %	GAUGE MILS	TENSILE PSI	ELONG. %	GAUGE MILS
DX 1570						
AVERAGE	106.3X100	72.	1.19	115.5X100	77.	0.99
STD.DEV.	4.1X100	5.	0.08	4.5X100	8.	0.03
95% C.L.	6.5X100	9.	0.12	7.2X100	13.	0.06

DX 1572

AVERAGE	124.0X100	66.	1.11	116.0X100	64.	1.11
STD.DEV.	9.1X100	7.	0.03	4.3X100	3.	0.01
95% C.L.	14.5X100	11.	0.05	6.8X100	5.	0.02

=====

MODULUS AT 73 DEG.F.

SAMPLE	LONGITUDINAL		TRANSVERSE	
	PSI	GAUGE, MILS	PSI	GAUGE, MILS
1570				
AVERAGE	100.7X1000	1.38	107.1X1000	1.06
STD.DEV.	7.3X1000	0.07	2.5X1000	0.03
95% C.L.	11.6X1000	0.11	4.0X1000	0.05

DX 1572

AVERAGE	146.1X1000	1.27	140.2X1000	1.16
STD.DEV.	6.9X1000	0.03	3.3X1000	0.03
95% C.L.	10.9X1000	0.06	5.3X1000	0.05

=====

TEAR PROPAGATION AT 73 DEG.F.

SAMPLE	LONGITUDINAL		TRANSVERSE	
	GRAMS	GAUGE, MILS	GRAMS	GAUGE, MILS
DX 1570				
AVERAGE	21.55	1.37	117.94	1.42
STD.DEV.	2.93	0.06	79.17	0.05
95% C.L.	4.66	0.09	125.97	0.08

95% CONFIDENCE LIMITS
FOR THE AVERAGE, N=4

- 2 -

TSR 1-6777

TERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

AR PROPAGATION AT 73 DEG.F.
LONGITUDINAL

TRANSVERSE

MPLE	GRAMS	GAUGE, MILS	GRAMS	GAUGE, MILS

IX 1572				
AVERAGE	5.78	1.14	6.60	1.18
STD.DEV.	0.32	0.04	0.61	0.06
95% C.L.	0.51	0.06	0.96	0.10

=====

ILL BURST IMPACT AT 73 DEG.F.
.00 IN. DIAM. SPHERE HD.

MPLE	CM-KG	GAUGE, MILS

IX 1570		
AVERAGE	25.0	1.38
STD.DEV.	2.2	0.06
95% C.L.	3.4	0.10

IX 1572		
AVERAGE	14.0	1.13
STD.DEV.	0.8	0.03
95% C.L.	1.3	0.04

=====

ATER VAPOR TRANSMISSION AT 100 DEG.F.

MPLE	GRAMS/(24HRS,100SQ.IN.) AT 100%RH	GAUGE, MILS

IX 1570		
	0.61	1.40
	0.94	1.04
	0.78	1.19

IX 1572		
	0.75	1.24
	0.83	1.04
	0.75	1.12

95% CONFIDENCE LIMITS
FOR THE AVERAGE, N=4

- 3 -

TSR 1-6777

TERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

SEE SHRINK AT 200 DEG.F.

LONGITUDINAL

TRANSVERSE

MPLE	PERCENT	PERCENT
OX 1570		
AVERAGE	: 20.	: 25.
STD.DEV.	: 2.	: 1.
95% C.L.	: 3.	: 2.

OX 1572		
AVERAGE	: 20.	: 24.
STD.DEV.	: 1.	: 2.
95% C.L.	: 2.	: 3.

SEE SHRINK AT 220 DEG.F.

LONGITUDINAL

TRANSVERSE

MPLE	PERCENT	PERCENT
OX 1570		
AVERAGE	: 34.	: 39.
STD.DEV.	: 2.	: 1.
95% C.L.	: 3.	: 1.

OX 1572		
AVERAGE	: 29.	: 34.
STD.DEV.	: 3.	: 3.
95% C.L.	: 4.	: 4.

SEE SHRINK AT 240 DEG.F.

LONGITUDINAL

TRANSVERSE

MPLE	PERCENT	PERCENT
OX 1570		
AVERAGE	: 67.	: 60.
STD.DEV.	: 2.	: 2.
95% C.L.	: 3.	: 4.

95% CONFIDENCE LIMITS
FOR THE AVERAGE, N=4

TERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

LONGITUDINAL

MPLE	PERCENT
------	---------

PERCENT

```
AVERAGE      :    46.
STD.DEV.     :     1.
95% C.L.     :     2.
```

```

: 46.
: 1.
: 2.

```

LONGITUDINAL

TRANSVERSE

MF'LE	PERCENT
1	100
2	100
3	100
4	100
5	100
6	100
7	100
8	100
9	100
10	100
11	100
12	100
13	100
14	100
15	100
16	100
17	100
18	100
19	100
20	100
21	100
22	100
23	100
24	100
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86	100
87	100
88	100
89	100
90	100
91	100
92	100
93	100
94	100
95	100
96	100
97	100
98	100
99	100
100	100

PERCENT

```
AVERAGE      :    72.
STD.DEV.     :     1.
95% C.I.     :     2.
```

: 67.
: 3.
: 5.

```

AVERAGE      : 57.
STD.DEV.     : 1.
95% C.L.     : 2.

```

: 58.
: 1.
: 2.

LONGITUDINAL

TRANSVERSE

MPLE	PERCENT
1	100
2	100
3	100
4	100
5	100
6	100
7	100
8	100
9	100
10	100
11	100
12	100
13	100
14	100
15	100
16	100
17	100
18	100
19	100
20	100
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82	100
83	100
84	100
85	100
86	100
87	100
88	100
89	100
90	100
91	100
92	100
93	100
94	100
95	100
96	100
97	100
98	100
99	100
100	100

PERCENT

AVERAGE : 73.
STD. DEV. : 1.
95% C.L. : 2.

```

:      68.
:      1.
:      1.

```

AVERAGE : 60.
STD. DEV. : 1.
75% C.L. : 2.

59.
1.
2.

CONFIDENTIAL - SECURITY INFORMATION

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TSR 1-6777

TERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

EE SHRINK AT 300 DEG.F.

LONGITUDINAL

TRANSVERSE

MPLE	PERCENT	PERCENT
X 1570		
AVERAGE	72.	68.
STD.DEV.	1.	1.
95% C.L.	1.	2.

X 1572		
AVERAGE	60.	58.
STD.DEV.	2.	4.
95% C.L.	4.	6.

=====

RINK PROPERTIES AT 200 DEG.F.

MPLE	LONGITUDINAL			TRANSVERSE		
	FORCE LBS	TENSION PSI	GAUGE MILS	FORCE LBS	TENSION PSI	GAUGE MILS
X 1570						
AVERAGE	0.343	338.	1.01	0.603	446.	1.35
STD.DEV.	0.026	18.	0.03	0.009	13.	0.03
95% C.L.	0.042	28.	0.04	0.014	21.	0.04

X 1572						
AVERAGE	0.359	325.	1.10	0.525	457.	1.15
STD.DEV.	0.063	58.	0.01	0.014	22.	0.03
95% C.L.	0.101	92.	0.02	0.023	34.	0.05

=====

RINK PROPERTIES AT 220 DEG.F.

MPLE	LONGITUDINAL			TRANSVERSE		
	FORCE LBS	TENSION PSI	GAUGE MILS	FORCE LBS	TENSION PSI	GAUGE MILS
X 1570						
AVERAGE	0.375	332.	1.13	0.650	440.	1.48
STD.DEV.	0.034	36.	0.05	0.035	5.	0.08
95% C.L.	0.054	57.	0.08	0.055	9.	0.12

95% CONFIDENCE LIMITS
FOR THE AVERAGE, N=4

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TSR 1-6777

TERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

SHRINK PROPERTIES AT 220 DEG.F.

SAMPLE	LONGITUDINAL			TRANSVERSE		
	FORCE LBS	TENSION PSI	GAUGE MILS	FORCE LBS	TENSION PSI	GAUGE MILS
1572						
AVERAGE	0.379	339.	1.13	0.504	464.	1.09
STD.DEV.	0.031	59.	0.11	0.009	12.	0.02
95% C.L.	0.049	94.	0.18	0.014	19.	0.03

SHRINK PROPERTIES AT 240 DEG.F.

SAMPLE	LONGITUDINAL			TRANSVERSE		
	FORCE LBS	TENSION PSI	GAUGE MILS	FORCE LBS	TENSION PSI	GAUGE MILS
1570						
AVERAGE	0.590	425.	1.39	0.674	453.	1.49
STD.DEV.	0.026	24.	0.03	0.021	14.	0.03
95% C.L.	0.042	39.	0.04	0.033	22.	0.05

1572

AVERAGE	0.453	472.	0.96	0.530	490.	1.08
STD.DEV.	0.013	14.	0.02	0.018	16.	0.03
95% C.L.	0.021	22.	0.03	0.028	25.	0.05

SHRINK PROPERTIES AT 260 DEG.F.

SAMPLE	LONGITUDINAL			TRANSVERSE		
	FORCE LBS	TENSION PSI	GAUGE MILS	FORCE LBS	TENSION PSI	GAUGE MILS
1570						
AVERAGE	0.605	424.	1.43	0.490	451.	1.09
STD.DEV.	0.033	10.	0.05	0.012	20.	0.06
95% C.L.	0.053	16.	0.08	0.019	31.	0.10

1572

AVERAGE	0.439	434.	1.01	0.514	479.	1.07
STD.DEV.	0.015	22.	0.03	0.032	26.	0.02
95% C.L.	0.024	35.	0.05	0.051	42.	0.03

95% CONFIDENCE LIMITS
FOR THE AVERAGE, N=4

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TSR 1-6777

DETERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

INK PROPERTIES AT 280 DEG.F.

SAMPLE	LONGITUDINAL			TRANSVERSE		
	FORCE LBS	TENSION PSI	GAUGE MILS	FORCE LBS	TENSION PSI	GAUGE MILS
1570						
AVERAGE	0.420	396.	1.06	0.424	426.	1.00
STD.DEV.	0.021	16.	0.01	0.019	21.	0.01
75% C.L.	0.034	25.	0.02	0.030	34.	0.02

1572

AVERAGE	0.459	437.	1.06	0.486	446.	1.09
STD.DEV.	0.017	29.	0.10	0.024	13.	0.04
75% C.L.	0.027	46.	0.16	0.038	21.	0.06

INK PROPERTIES AT 300 DEG.F.

SAMPLE	LONGITUDINAL			TRANSVERSE		
	FORCE LBS	TENSION PSI	GAUGE MILS	FORCE LBS	TENSION PSI	GAUGE MILS
1570						
AVERAGE	0.350	341.	1.03	0.460	402.	1.16
STD.DEV.	0.017	17.	0.03	0.061	29.	0.23
75% C.L.	0.027	28.	0.04	0.097	46.	0.37

1572

AVERAGE	0.490	415.	1.18	0.446	410.	1.09
STD.DEV.	0.052	45.	0.04	0.018	16.	0.00
75% C.L.	0.082	71.	0.07	0.029	26.	0.00

DENSITY AT 23 DEG. C.

SAMPLE	GRAMS/CC
--------	----------

1570

0.9649

0.9654

75% CONFIDENCE LIMITS
FOR THE AVERAGE, N=4

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TSR 1-6777

TERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

DENSITY AT 23 DEG. C.

SAMPLE	GRAMS/CC
DX 1572	0.9431 0.9434

=====

COEFFICIENT OF FRICTION (ASTM SLED) AT 73 DEG.F.

SAMPLE	IN/IN STATIC KINETIC	OUT/OUT STATIC KINETIC
DX 1570		
AVERAGE	3.338 BLOCKED	3.050 BLOCKED
STD.DEV.	0.283	0.180
95% C.L.	0.450	0.286

DX 1572

AVERAGE	0.879	0.313	0.460	0.269
STD.DEV.	0.212	0.053	0.058	0.013
95% C.L.	0.337	0.084	0.092	0.020

=====

OPTICAL PROPERTIES AT 73 DEG.F.

SAMPLE	HAZE %	TOTAL TRANSMISSION %	CLARITY %	GLOSS 45 DEG.	GAUGE MILS
DX 1570					
AVERAGE	2.4		66.7	91.	1.20
STD.DEV.	0.3		10.6	2.	0.02
95% C.L.	0.4		16.8	4.	0.03

DX 1572

AVERAGE	2.6		32.8	85.	1.10
STD.DEV.	0.1		11.2	3.	0.05
95% C.L.	0.2		17.8	4.	0.08

95% CONFIDENCE LIMITS
FOR THE AVERAGE, N=4

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TSR 1-6777

DETERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

TENSILE STRENGTH (INSTRON) AT 73 DEG.F.

SAMPLE LBS/INCH

K 1570 BETWEEN LAYER 1 AND 2

AVERAGE SPLIT OFF
 STD.DEV.
 95% C.L.

K 1570 BETWEEN LAYER 4 AND 5

AVERAGE SPLIT OFF
 STD.DEV.
 95% C.L.

K 1572 BETWEEN LAYER 1 AND 2

AVERAGE 0.14
 STD.DEV. 0.01
 95% C.L. 0.02

K 1572 BETWEEN LAYER 4 AND 5

AVERAGE 0.06
 STD.DEV. 0.00
 95% C.L. 0.01

OXYGEN TRANSMISSION (OX-TRAN) AT 73 DEG.F., 0% RH

SAMPLE CCSTP/(24HRS,SQ.M.,ATM.) GAUGE, MILS

K 1570

1.9 OPTICAL
 1.8
 1.6

K 1572

3.1 OPTICAL
 3.0
 2.3

TESTS: 142461B-142466B 133082B 142468B *AW*
 40 M H

TEST 1: LAYER GAUGE AND 100% RH OXYGEN TRANSMISSION WILL BE SUBMITTED LATER
 TEST 2: COULD ONLY SEPERATE BOND SPECIMEN BETWEEN 2 LAYERS

DATE: 5 15 85

APPROVED BY: *R*

95% CONFIDENCE LIMITS
 FOR THE AVERAGE, N=4

- 1 -

TSR 1-6777

TERMINE THE PROPERTIES OF SEVEN LAYER OXYGEN BARRIER SHRINK FILMS

IF

OXYGEN TRANSMISSION (OX-TRAN) AT 73 DEG.F., 100% RH

SAMPLE	CCSTP/(24HRS,SQ.M.,ATM.)	GAUGE, MILS

OX 1570		
	369.3	1.10
	346.2	1.28
	337.0	1.22

OX 1572		
	222.5	1.22
	174.5	1.08
	152.7	1.31

PAGES: 144516B 145797B
6 M H

NOTE1:

NOTE2:

DATE: 8 9 85

APPROVED BY:

TAB U
TO EXHIBIT 15

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF DELAWARE

CRYOVAC, INC.,)
Plaintiff,)
v.) CASE NO.
PECHINEY PLASTIC) 04-1278-KAJ
PACKAGING, INC.,)
Defendant.)

VIDEOTAPED 30(b)(6) DEPOSITION OF CRYOVAC, INC.
BY AND THROUGH GAUTAM P. SHAH, CORPORATE DESIGNEE
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Thursday, August 11, 2005

Reported by: Lori G. Mackenzie, RPR

Job No: 169071B

COPY

GAUTAM P. SHAH, AUGUST 11, 2005
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 reduced to practice by August 30 of 1985.

2 MR. FUCHS: I have no further
3 questions.

4 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

5 BY MR. TRYBUS:

6 Q. Mr. Shah, how does Exhibit 2
7 corroborate that the invention of Claim 11 of the
8 '419 patent was done by you, as opposed to anyone
9 else?

10 A. Because Tommy Kay, who wrote this
11 document was assigned to my project and he was
12 working as per my instructions.

13 And, the film structure he has
14 recorded here is the one that I had conceived
15 before he made that.

16 Q. Is there anything in Exhibit 2 that
17 shows that Mr. Kay was assigned to your project?

18 MR. FUCHS: Form objection.

19 THE WITNESS: There is nothing in
20 the exhibit here that indicates that Tommy Kay
21 was assigned to me to do this work.

22 BY MR. TRYBUS:

Tommy Kay August 16, 2005

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYOVAC, INC.,

Plaintiff/Counter-Defendant,

Civil Action No. 04-1278

vs.

Hon. Kent A. Jordan

PECHINEY PLASTIC PACKAGING, INC.,

Defendant/Counter-Plaintiff.

VIDEOTAPED

DEPOSITION OF: Tommy Kay

DATE: August 16, 2005

TIME: 9:18 a.m.

LOCATION: Nelson, Mullins, Riley & Scarborough
104 South Main Street

Greenville, SC 29601

TAKEN BY: Counsel for Defendant

REPORTED BY: KENNETH McCLURE,
Registered Merit Reporter

Computer-Aided Transcription By:

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COPY

VIDEOTAPE

Tommy Kay August 16, 2005

Page 2

1 APPEARANCES OF COUNSEL

2 ATTORNEYS FOR PLAINTIFF CRYOVAC:

3 FINNEGAN HENDERSON, FARABOW,
4 GARRETT & DUNNER, LLP

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7 Washington, D.C. 20001-4413

8 (202) 408-4413

9 rebecca.hess@finnegan.com

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12 BY: LI-CHUNG DANIEL HO, ESQ.

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14 Chicago, IL 60611-7603

15 (312) 222-9350

16 dho@jenner.com

17

18 ALSO PRESENT:

19

20 JACK MARKS, VIDEOGRAPHER

21

22

23

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32

33

Tommy Kay August 16, 2005

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1 MS. HESS: May I please have the question
2 read?

3 (The pending question was read.)

4 MS. HESS: I'm going to object to the form
5 of the question, counselor.

6 Q. If you know.

7 MS. HESS: Lack of foundation.

8 A. I don't know.

9 Q. Now, Mr. Kay, when was the first time you
10 became aware of the film structure that's identified
11 as FDX 1570 that's in your Notebook No. 139208B?

12 A. April the 2nd.

13 When did I become aware of it?

14 Q. Correct. Of this particular film
15 structure. If you recall.

16 A. I don't recall when I became aware -- the
17 engineer, probably the day before or day -- during
18 that week, said: We need to schedule that run.
19 This is the day that I made it on. A day or two
20 prior to this, we discussed what we were going to
21 do.

22 Q. Do you know who is the engineer that told
23 you about the film structure that's FDX 1570?

24 A. Gautam Shah.

25 Q. Do you remember what he told you about this

Tommy Kay August 16, 2005

Page 195

1 Q. -- and before you read this abstract.
2 section that you just did for the 562 patent, do you
3 recall knowing about the film structure that
4 Mr. Fant described here?

5 A. No.

6 MS. HESS: Objection. Lack of foundation.
7 You didn't lay the foundation that he even
8 understands what he just read for the first time.

9 MR. HO: I have no further questions.

10 MS. HESS: Can we take a short break?

11 MR. HO: Sure.

12 THE VIDEOGRAPHER: Going off the record at
13 17:00 hours.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: Back on the video record
16 at 17:19.

17 EXAMINATION

18 BY MS. HESS:

19 Q. Mr. Kay, I'm just going to ask you a few
20 questions.

21 How did you know what materials to use in
22 the layers of FDX 1570 and 1572?

23 A. Through the engineer, Gautam Shah,
24 instructing me.

25 Q. And how did you know what layer ratios or

Tommy Kay August 16, 2005

Page 196

1 thicknesses to use for the films FDX 1570 and 1572?

2 A. Through the engineer, Gautam Shah.

3 Q. He told you --

4 A. To -- to set it up like what we set it up
5 here, or that way. He gave me the numbers.

6 Q. And how did you know what order to put the
7 layers in in the films FDX 1570 and FDX 1572?

8 A. Per Gautam Shah's instructions.

9 Q. And how did you know to orient the films
10 FDX 1570 and 1572?

11 A. On the MPD line there that we have been
12 discussing, we knew to come there. We was going to
13 rack it and make film from it, and that's the only
14 place we could do it.

15 Q. Who told you, if anyone, to use the MPD
16 line to make the films?

17 A. Gautam, Gautam Shah, Mr. Shah.

18 Q. And how did you know to make a film with
19 seven layers as opposed to five layers?

20 A. Through Gautam Shah.

21 Q. Did Mr. Shah tell you to coextrude the
22 film?

23 A. Yes. He told us to build the MPD line. We
24 knew that was a coextrusion line, and it would
25 automatically be extruded.